

COPY

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2003 JUL 11 PM 12 11

Movant: State of Idaho

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)	Subcase No. 92-00021
)	
)	MOTION FOR ORDER OF
Case No. 39576)	INTERIM ADMINISTRATION
)	AND NOTICE OF HEARING
)	
)	

The State of Idaho moves this Court for an order of interim administration of water rights¹ in Snake River Basin Adjudication Basin 29 pursuant to Idaho Code § 42-1417,

¹ The State of Idaho previously filed a motion for interim administration for Basins 35, 36, 41 and 43. The court authorized interim administration for these Basins on January 8, 2002. Later, the State of Idaho filed a motion for interim administration in Basin 37, Part 1 Groundwater. The court authorized interim administration in this Basin on November 19, 2002. This motion does not seek authorization for interim administration of domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

in accordance with the most current Director's Report for Snake River Basin Adjudication Basin 29, filed with the Court, or in accordance with partial decrees that will supersede the Director's Report. The grounds for this motion are as follows:

1. Idaho Code § 42-1417 provides that the district court may, by order, permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, through water districts in accordance with the Director's Report and the partial decrees for water rights acquired under state law or established under federal law. Idaho Code § 42-1417 provides that the district court may enter the order after notice and hearing, if the district court determines that interim administration of water rights is reasonably necessary to protect senior water rights.
2. Interim administration of water rights in Basin 29 is reasonably necessary because the available water supply is currently not adequate to satisfy some senior priority water rights and is projected, in the future, to be insufficient, at times, to satisfy these water rights.
3. In accordance with Idaho Code § 42-1417(2)(b), notice of this motion is being provided to all affected claimants in Basin 29 by mailed notice.

THEREFORE, the State respectfully moves this Court for an order authorizing interim administration of water rights in Basin 29 in accordance with the most current Director's Report for this Basin, or in accordance with partial decrees that will supersede the Director's Report. The Affidavit of Timothy J. Luke Dated July 10, 2003 and a brief in support of this motion are submitted herewith. Oral argument on this motion is requested.

////

////

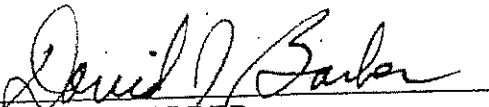
NOTICE OF HEARING.

Notice is hereby given that the motion for interim administration for Basin 29 will be heard on October 21, 2003, at 1:30 p.m. at the SRBA courthouse in Twin Falls, Idaho.

DATED this 10th day of July 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION


DAVID J. BARBER
Deputy Attorney General

RECEIVED

NOV - 3 2003

Department of Water Resources

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2003 OCT 31 PM 2 59

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

)
) Subcase 92-00021
) (Interim Administration)
)

) ORDER GRANTING STATE OF IDAHO'S
) MOTION FOR ORDER OF INTERIM
) ADMINISTRATION OF WATER RIGHTS IN
) A PORTION OF ADMINISTRATIVE BASIN
) 29
)

I.

PROCEDURAL BACKGROUND

1. On February 19, 2002, following a prior determination that junior rights diverting from the Eastern Snake Plain Aquifer (ESPA) either adversely affected, or were projected in the future, to adversely affect hydraulically connected senior surface rights, the Director of the Idaho Department of Water Resources (IDWR) issued a *Final Order Creating Water District 120*, in accordance with chapter 6, title 42, Idaho Code. Water District 120 was created for the purpose of administering those groundwater rights from the ESPA affecting, or projected to affect, hydraulically connected senior surface rights. The boundaries of Water District 120 are currently limited to those geographic areas where this Court has previously authorized interim administration, which presently includes portions of Administrative Basins 35 and 41. See *Order Granting State of Idaho's Motion for Order of Interim Administration*, Subcase 92-00021 (Jan. 8, 2002). The intent of the Director is to expand the boundaries of Water District 120 as those groundwater rights supplied from the ESPA located within the geographic area of

the proposed boundaries for the water district are eventually reported and/or decreed. See "Attachment A" attached hereto and incorporated herein by reference.

2. On July 11, 2003, IDWR filed its *Director's Report for Irrigation & Other Uses, Reporting Area 9, IDWR Basin 29*.

3. Also on July 11, 2003, the State of Idaho filed a *Motion for Order of Interim Administration* pursuant to I.C. § 42-1417 seeking administration of those groundwater rights located in that portion of Basin 29 located within the proposed boundaries of the water district.

4. On that same date, the State of Idaho also filed a *Brief in Support of Motion for Order of Interim Administration*; the *Affidavit of Timothy J. Luke Dated July 10, 2003*; and a *Certificate of Service* evidencing service of the State's *Motion* and related documents on those claimants in IDWR Administrative Basin 29 reasonably determined to be adversely affected by the entry of the requested *Order*.

5. A hearing was held on the State's *Motion* on October 21, 2003. No party filed an objection or appeared in opposition to the *Motion*.

II.

LEGAL STANDARDS FOR INTERIM ADMINISTRATION

1. Chapter 6, title 42, Idaho Code, sets forth the provisions of law governing administration of water rights in Idaho. "Administration of water rights" is the distribution of water to water users in accordance with the prior appropriation doctrine as set forth in Idaho law. Chapter 6 assigns to the Director the responsibility for supervising the distribution of water from all natural water sources and directs that the Director will exercise this duty through the creation and function of water districts with an administrative officer designated as the watermaster under the Director's supervision. I.C. § 42-602. However, chapter 6 only authorizes the creation of water districts where the water sources have been adjudicated by a court having jurisdiction thereof. I.C. § 42-604. The exception to this limitation is a geographic unit where the district court has authorized interim administration in accordance with I.C. § 42-1417.

2. Idaho Code § 42-1417 authorizes interim administration of water rights and provides, in part, as follows:

(1) The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho:

- (a) in accordance with the director's report or as modified by the court's order;
 - (b) in accordance with applicable partial decree(s) for water rights acquired under state law;
 - (c) in accordance with applicable partial decree(s) for water rights established under federal law.
- (2) The district court may enter the order only:
- (a) upon motion by a party;
 - (b) after notice by the moving party by mail to the director and each claimant from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order; and
 - (c) upon a determination by the court, after hearing, that the interim administration of water rights in accordance with the report, or as the report is modified by the court's order, and in accordance with any partial decree(s), is reasonably necessary to protect senior water rights.

I.C. § 42-1417 (1996) (emphasis added).

3. Idaho Code § 42-1417 therefore requires the district court to make the following determination: (1) a party filed a motion for interim administration, (2) the moving party served by mail each claimant that could reasonably be determined to be adversely affected, (3) interim administration is reasonably necessary to protect senior water rights, and (4) the water rights should be administered in accordance with the director's report, as modified by the district court, or in accordance with partial decrees that supercede the director's report.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having heard the motion and reviewed the pleadings, makes the following findings of fact and conclusions of law.

1. The State of Idaho has complied with the notice and service requirements of I.C. § 42-1417(2)(b).

2. The available water supply in portions of IDWR Administrative Basin 29 is currently not adequate to satisfy some hydraulically connected senior priority rights and is projected in the future to be inefficient at times to supply these rights.

3. Interim administration in IDWR Administrative Basin 29 in accordance with the *Director's Reports* and the *Partial Decrees* for water rights is reasonably necessary to protect


senior water rights in accordance with the prior appropriation doctrine as established by Idaho law.

IV.
ORDER

Based on the foregoing, and pursuant to I.C. § 42-1417, the State of Idaho's *Motion for Order of Interim Administration* of those water rights located within that portion of IDWR Administrative Basin 29 containing the ESPA, as depicted in ATTACHMENT A, is hereby granted. The Court authorizes the distribution of water pursuant to chapter 6, title 42, Idaho Code in accordance with the *Director's Reports* and the *Partial Decrees* that supercede the *Director's Reports* in IDWR Administrative Basin 29.






IT IS SO ORDERED.

Dated October 29th, 2003.

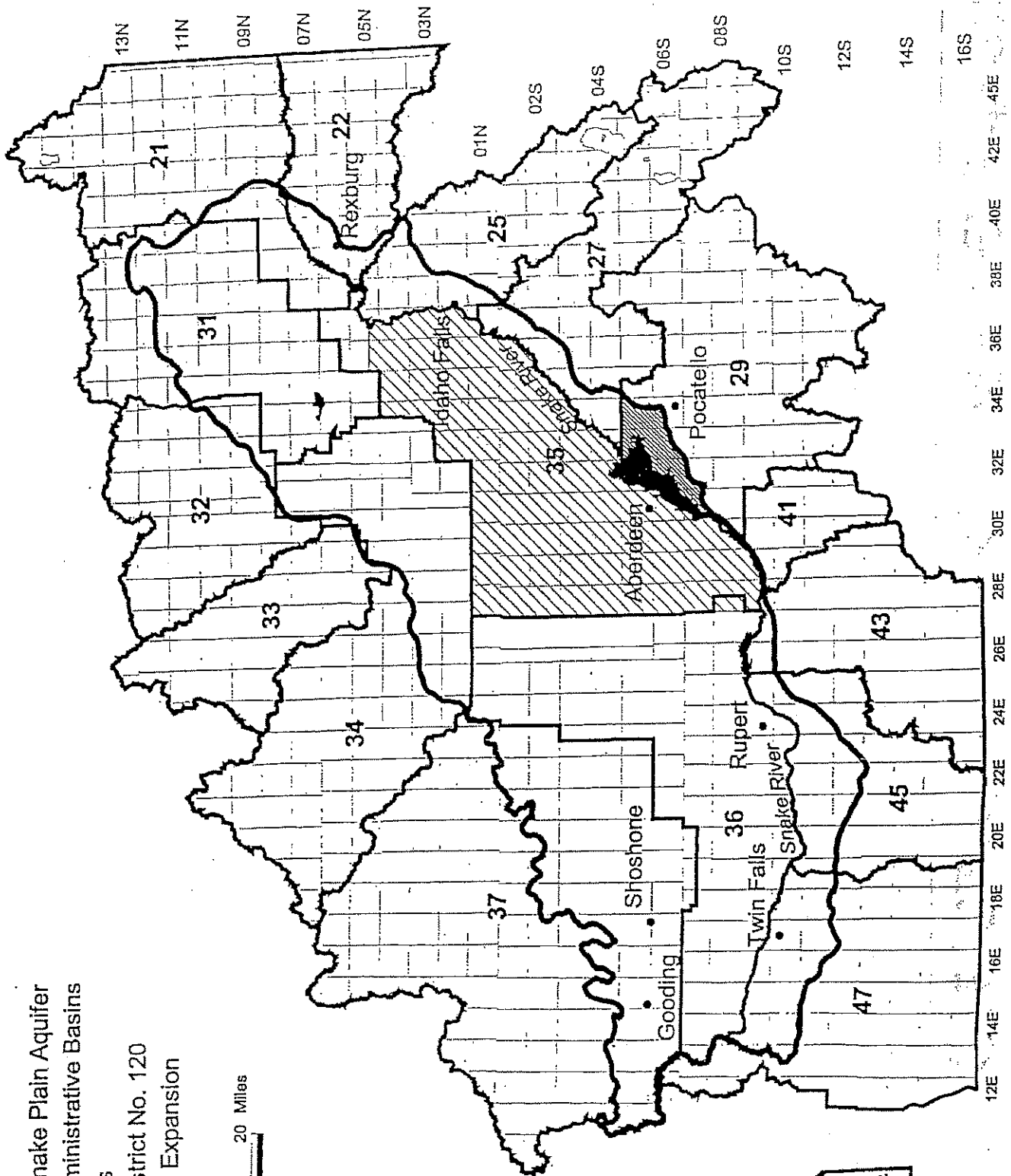


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

WATER DISTRICT NO. 120 PROPOSED EXPANSION

-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Water District No. 120
-  Proposed Expansion

10 0 10 20 Miles



SCANNED

JONES

568